



UNIVERSITY OF TORONTO
FACULTY OF LAW

ADVANCED LEGAL RESEARCH, ANALYSIS & WRITING

Bonnie E. Fish

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1. Legal Research Process

- Merksy, Roy. F, *Fundamentals of Legal Research*, 8th ed. (New York: Foundation Press, 2002) at 14-20
- Rosemary Bocska, "When is it time to stop doing research?" *Lawyers Weekly* (July 22, 2005)
- Best Guide to Canadian Legal Research: Plan and organize your research
<http://legalresearch.org/docs/process01.html>
- Best Guide to Canadian Legal Research: Basic legal research checklist
<http://legalresearch.org/docs/checklist.html>

2. Researching Case Law

- Ted Tjaden, *Legal Research & Writing*, 2nd ed. (Toronto: Irwin Law, 2004) Chapter 4
- Perell, Paul, "Stare Decisis and Techniques of Legal Argument" *How To Research Your Way Out of a Paper Bag* (Toronto: Ontario Bar Association, 2003)
- Stare Decisis – Hierarchy of Decisions

3. Researching Canadian Legislation

- *Legislation Act, 2006*, S.O. 2006, c.21, Sched. F
- How a Government Bill Becomes a Law. Ontario Legislative Library.
- When do Acts and Regulations Come Into Force. Ontario Legislative Library (2007)

4. Legal Writing

- Kleefeld, John. "Write Me a Memo" (2010), 4 CLEAR 217
- McCallum, Margaret. *Synthesis: Legal Reading, Reasoning and Writing in Canada*, 3rd ed. (Toronto: CCH, 2012) at Chapters 10 and 14

5. Sample Factums

- Precedent - Factum of the Moving Party
- Precedent - Factum of the Responding Party

Best Guide to Canadian Legal Research

Plan and organize your research

Introduction

Each researcher will develop her own research strategy for the various situations she encounters. The strategy will vary depending on

- the purpose and nature of the research project
- how much the researcher knows about the subject
- the amount of time and money devoted to the project.

In order to develop effective research strategies, the researcher must spend time thinking about these factors before embarking on her research, and periodically revisit and revise her research plan in response to feedback from her research results. The researcher must also be familiar with the various sources: their content and coverage, their strengths and weaknesses, and their appropriate use.

The steps set out in Research Essentials will not be appropriate for every research problem. However, they will give you some guidance on how to approach your research when confronted with the multiplicity of resources available to you.



These steps are not completely linear. You may need to repeat certain steps or approach some sources again from a different perspective as your understanding of a legal issue grows. You will not need to complete all steps for each issue you research.

Parameters



When you are in practice, your research strategy must be developed taking into account several parameters:

- the deadline for completion of your research
- restrictions on the amount of time and disbursements that can be expended
- the purpose for which your research is required
 - more detailed and exhaustive research is required when preparing for argument at trial than when you are drafting the pleadings
 - the focus of your research will be different if you are preparing an opinion letter or legal memorandum rather than an argument for court
 - the scope of your research will be different depending on the level of court you are appearing before.



In law school many of these parameters are irrelevant. You determine how much time you can spend on a research project. You have unlimited access to otherwise expensive on-line search tools. You are free to step outside the bounds of *stare decisis* and take a critical look at the law. This means you can conduct more extensive research than would often be the case in practice. You may focus more on the law of other jurisdictions and on secondary literature. You can extend your inquiry beyond what the law is to what it should be.

Initial analysis



If your research problem is based on a fact pattern, consider the facts that have been given to you and start to characterize those facts within a legal framework. There are several ways to structure your initial analysis. Maureen Fitzgerald, in *Legal Problem Solving* (Toronto: Butterworths, 1996), recommends the following structure at pages 7-8:

- **Parties**
 - Who are the people involved in the problem?
 - What are the parties' roles or occupations?
 - What are the relationships between the parties?
 - What are the parties' special characteristics?
- **Events**
 - What occurred?
 - When did it occur?
 - Where did it occur?
 - What is the nature of the location where it occurred?
 - How did it occur?
- **Claims**
 - What are the parties complaining of?
 - What are the parties claiming?
 - What are the injuries or harm?
 - What will the defence to the claim likely be?

This initial "thinking time" is crucial to your research. If you don't consider the problem in this open-ended way at the beginning, you may miss important issues. During this process, note whether some facts or legal issues may be determinative. For example, an impecunious defendant, or the expiration of a limitation period, may make the rest of your research academic. Determinative issues should be given priority when you start your research.



As you carry out this analysis, make a list of key words and subject headings to use during your research. Include important factual terms as well as legal concepts in your list of key words.

Proper identification of the issues and of key words and subject headings at this stage will expedite your research, and permit a more accurate and thorough analysis of the law. As you proceed through the steps identified below, constantly refer back to your initial characterisation of the issues. It is common for a researcher to change her definition of the issues as she progresses with the research project.



If your research is for a seminar paper, you will need to develop a thesis. Rather than just regurgitating information about a topic, you must identify what *you* want to say about the topic. The first step is to acquaint yourself with secondary and primary sources on the topic. Then, in order to develop your thesis, you must spend time thinking about your research data in a variety of creative ways. Some techniques for doing this are discussed in the section on Assess the Cases.

Organisation of research material



In a simple, single issue research project, you can keep all of your material in a single folder without any problem. However, for a more complex research assignment, you should keep a separate folder for each separate issue of law. Put copies of relevant sources in the appropriate folder, together with notes indicating whether these sources have been updated. In one master folder you should keep your general research notes, including the problem assigned, your research strategy, the issues and sub-issues identified, and your notes on which sources have been reviewed or rejected and which sources must still be checked.

Research bibliography

In order to conduct your research in an orderly fashion, it is necessary to keep a list of the sources you have reviewed. A complete research bibliography will contain the following information:

- title, author and year (or most current release date) for texts, citation for periodical articles, page references for helpful or damaging passages
- headings and classification numbers used in searching digest and encyclopaedia services, and the currency date for the topics searched
- databases searched, date of search, and search string used
- headings used for searching in case reporter indices, and the volume number of the most recent paper part checked
- case citations for cases reviewed, references to page numbers for helpful or damaging passages, and a record of where and when you noted up the case
- list of statutory provisions reviewed, together with the date to which you checked whether the statute had been amended, and a record of where you checked for judicial consideration of statute

This information will keep you from going in circles and repeating the same steps. It will enable you to quickly prepare a bibliography. It will permit whomever is supervising your research to ascertain whether you have covered the proper sources, and will help you or someone else to quickly update your research at a later date.

Using a research checklist



Although a checklist does not permit a detailed record, it will help you keep track of your research, and will also remind you of sources to consult. This site includes a sample checklist. All sources listed on the checklist do not have to be checked for every research project. Conversely, the checklist is not exhaustive. Additional sources should be consulted depending on the nature of your project.

Preliminary strategy

The easiest way to map out your initial strategy is to review a legal research checklist, and mark the sources you intend to consult. If your research problem involves more than one legal issue, use a different copy of the checklist for each issue.



It will be difficult to map out a detailed research strategy until after you have reviewed some secondary sources dealing with your issues. Your strategy will vary depending on your general familiarity with the subject, and the nature of your research project. Although these readings set out a general methodology for research, your strategy must always be adapted to your situation. It must be focused on the appropriate resources in your subject area, taking into account the parameters listed above.

- For a common law issue, you will usually start by reviewing one or more narrative secondary sources. However, your circumstances may dictate a different approach. If you are already familiar with the general area of law, and know a leading case, you can start your research by reviewing that case and noting it up.
- Statutory research is rather different from researching the common law. It requires that you start with consideration of the statute itself, and then look for judicial consideration of and commentary on the statute. Your first step will probably be to find and review an annotated version of the statute.
- Some research problems may require you to go beyond traditional legal sources and include research from other disciplines.

References

Best, Basic Legal Research Checklist.

Fitzgerald, *Legal Problem Solving - Reasoning, Research and Writing*, 5th ed. (Toronto: LexisNexis Canada, 2010).

Iosipescu & Whitehead, *Legal Writing and Research Manual*, 6th ed. (Toronto: LexisNexis Butterworths, 2004).

MacEllven, *Legal Research Handbook*, 5th ed. (Toronto: LexisNexis Canada, 2003).

McCallum, *Synthesis: Legal Reading, Reasoning and Writing in Canada*, 2nd ed. (Toronto: CCH Canadian, 2008).

McCormack, Papalopoulos & Cotter, *The Practical Guide to Canadian Legal Research*, 3rd ed. (Toronto: Thomson Reuters Canada, 2010).

Queen's University Faculty of Law, Legal Research Materials, Steps in Legal Research.

Tjaden, *Legal Research and Writing*, 3rd ed. (Toronto: Irwin Law, 2010). Companion website: www.legalresearchandwriting.ca

Tjaden, "Strategic Thinking in Legal Research" (20 July 2011) online: slaw <www.slaw.ca>.

University of Calgary, Law Library Research Guides, Starting Points.

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Best Guide to Canadian Legal Research

Basic legal research checklist

TEXTS & LOOSELEAF SERVICES

Access through catalogues in

- ☐ Firm library
- ☐ Courthouse library
- ☐ Law faculty library

- ☐ Online texts
- ☐ Worldcat.org

ENCYCLOPEDIAS

- ☐ CED (in print or on LawSource)
- ☐ Halsbury's Laws of Canada
- ☐ Halsbury's 4th (UK)
- ☐ Halsbury's 3rd (UK) & Converter
- ☐ Halsbury's Laws of Australia (Aust)
- ☐ AmJur 2d (US)
- ☐ Corpus Juris (US)
- ☐ Other _____

ON-LINE RESEARCH

- ☐ CanLII (Cdn)
- ☐ Quicklaw (Cdn)
- ☐ Westlaw Canada (Cdn)
- ☐ BestCase (Cdn)
- ☐ Maritime Law Books (Cdn)
- ☐ BAILII (UK)
- ☐ AustLII (Aust)
- ☐ Lexis (US, UK, Aust, European, International, some NZ & Cdn)
- ☐ Westlaw (US, UK, European, International)
- ☐ UBC Law Library Electronic Resources
- ☐ Courthouse Libraries BC Databases

DIGESTS

- ☐ Abridgment Canadian Case Digests (in print or on LawSource)
- ☐ The Canada Digest (QL)
- ☐ SCC Reports Service
- ☐ Criminal Law Digests (CLE Society of BC)
- ☐ Civil Law Digests (CLE Society of BC)
- ☐ All Canada Weekly Summaries (BestCase)
- ☐ Weekly Criminal Bulletin (BestCase)
- ☐ The Digest (UK, Commonwealth, Europe)
- ☐ Australian Digest (Aust)
- ☐ New Zealand Digest (NZ)
- ☐ West's General Digest (US)
- ☐ Other _____

PERIODICALS & CLE MATERIALS

- ☐ CLE Online (CLE Society of BC, starting 2001)
- ☐ Full text periodicals databases in Lexis, Westlaw, Quicklaw, Westlaw Canada
- ☐ Canadian Bar Review at cba.org
- ☐ Index to Canadian Legal Literature (in print or online)
- ☐ Hein Online (Courthouse Libraries BC or UBC)
- ☐ Index to Canadian Legal Periodical Literature
- ☐ In Conference (Insight papers on CD ROM)
- ☐ Canadian Law Symposia Index (QL)
- ☐ Index to Legal Periodicals (US, Commonwealth)
- ☐ LegalTrac (US, Commonwealth)
- ☐ Legal Journals Index (UK)
- ☐ Index to Foreign Legal Periodicals (not US or Commonwealth)
- ☐ Index to Periodical Articles related to Law
- ☐ ALR Annotations (US)
- ☐ Other _____

LAW REPORTS - GENERAL

- ☐ Dominion Law Reports
- ☐ Western Weekly Reports
- ☐ National Reporter
- ☐ All England Reports (UK)
- ☐ Law Reports (UK)
- ☐ Australian Law Reports (Aust)
- ☐ Commonwealth Law Reports (Aust)
- ☐ New Zealand Law Reports (NZ)
- ☐ West Reporters (US)
- ☐ Other _____

LAW REPORTS - JURISDICTIONAL

- ☐ Supreme Court Reports
- ☐ Federal Court Reports
- ☐ Federal Trial Reports
- ☐ British Columbia Law Reports
- ☐ British Columbia Reports
- ☐ British Columbia Appeal Cases
- ☐ Alberta Reports
- ☐ Alberta Law Reports
- ☐ Saskatchewan Reports
- ☐ Manitoba Reports
- ☐ Western Appeal Cases
- ☐ Ontario Appeal Cases
- ☐ Ontario Reports
- ☐ New Brunswick Reports
- ☐ Nova Scotia Reports
- ☐ Newfoundland & Prince Edward Island Reports
- ☐ Atlantic Provinces Reports
- ☐ Yukon Reports
- ☐ Other _____

LAW REPORTS - TOPICAL

- ☐ See Topical Reporters chart

CASES JUDICIALLY CONSIDERED

- ☐ QuickCite on Quicklaw
- ☐ KeyCite on Westlaw Canada
- ☐ Reflex on CanLII
- ☐ Canadian Case Citations
- ☐ Full text searches on Quicklaw, LawSource or CanLII
- ☐ Case reporter indices
- ☐ Current Law (UK)
- ☐ The Digest (UK)
- ☐ Australian Citator (Aust)
- ☐ Westlaw: Shepard's, KeyCite (US)
- ☐ LawCite (UK/Commonwealth)
- ☐ Lexis: Shepard's, AutoCite (US)

STATUTES JUDICIALLY CONSIDERED

- ☐ KeyCite on Westlaw Canada
- ☐ Canadian Statute Citations
- ☐ QuickCite on Quicklaw
- ☐ Statutes of BC Judicially Considered
- ☐ Annotated statutes
- ☐ CCH looseleaf services

- ☐ Full text searches

WORDS & PHRASES

- ☐ Carswell's Words & Phrases (in print or in LawSource)
- ☐ Quicklaw's Canadian Legal Words and Phrases
- ☐ Irwin Law's Canadian Online Legal Dictionary
- ☐ Canadian Case Digests (Abridgment, Digests in LawSource)
 - ☐ Contracts - Interpretation
 - ☐ Statutes - Interpretation
 - ☐ Time
- ☐ Words & Phrases Legal Maxims Canada
- ☐ CED
- ☐ Statutory Interpretation Texts
- ☐ Contracts Texts
- ☐ Canadian Legal Dictionary
- ☐ Black's Law Dictionary (US)
- ☐ West's Words & Phrases (US)
- ☐ Words & Phrases Legally Defined (UK)
- ☐ Stroud's Judicial Dictionary (UK)
- ☐ Jowitt's Dictionary of English Law (UK)
- ☐ Halsbury's (in Index under Words & Phrases)
- ☐ Case reporter indices
- ☐ Dictionaries

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